

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B04

PLR-135343-09

Date:

January 20, 2010

In Re:

### Legend

Grantor	=
Spouse	=
Daughter 1	=
Daughter 2	=
Trust 1	=
Trust 2	=
Date 1	=
Accountant	=
Attorney	=
Date 2	=
Year 1	=
Year 2	=
Year 3	=
Year 4	=
Year 5	=
Year 6	=
Year 7	=

Dear :

This responds to your authorized representative's letter of July 14, 2009, requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration Regulations to make an allocation of generation-skipping transfer (GST) exemption.

### Facts

The facts and representations submitted are summarized as follows: Grantor and Spouse created two irrevocable trusts, Trust 1 for the benefit of Daughter 1 and Trust 2

for the benefit of Daughter 2. Trust was funded in Year 1 and an addition was made in Year 2. Accountant prepared the Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return but did not request Trust 1 or Trust 2 documents. No allocation of GST exemption was made on the Forms 709.

Additional transfers were made to Trust 1 and Trust 2 in Years 3, 4, 5, and 6. Grantor and Spouse erroneously believed that all of the gifts made in Years 3 through 6 qualified for the annual exclusion. However, Daughter 1 and Daughter 2 (the beneficiaries of Trust 1 and Trust 2) had no present interest in Trust 1 and Trust 2. Consequently, no returns were filed and no GST exemption was allocated to any of those gifts. Grantor became terminally ill in Year 7. In reviewing the circumstances surrounding Trust 1 and Trust 2, Attorney discovered that Grantor and Spouse had not allocated their available GST exemption to the trusts. Grantor indicated that he thought Accountant had taken the proper steps regarding allocation of the GST exemption. Grantor died on Date 2.

### Law and Analysis

Section 2601 of the Internal Revenue Code imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), as in effect for the tax years at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(2) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Grantor's Estate and Spouse are granted an extension of time of 60 days from the date of this letter to make an allocation of Grantor and Spouse's available GST exemption, with respect to their transfers to Trust in Years 1 through 6. The allocation will be effective as of the respective dates of the transfers to Trust and the value of the transfers to Trust as determined for federal gift tax purposes will be used in determining the amount of Grantor's exemption to be allocated to Trust.

This allocation should be made on a supplemental Form 709 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. The conclusions in this ruling with respect to the estate and generation-skipping transfer tax pertain any time those sections are applicable.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Curt G. Wilson  
Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures

Copy for section 6110 purposes  
Copy of this letter